

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

To: The Commission

PP Docket No. 93-253

COMMENTS OF COUNCIL OF 100

The Council of 100 (Council), a national organization of African American Republicans, respectfully submits comments on the Commission's Notice of Proposed Rule Making (NPRM) regarding Implementation of Section 309(j) of the Communications Act of 1934, as amended by the Omnibus Budget Reconciliation Act of 1993¹.

SUMMARY

The Council commends the Commission on the thoughtfulness with which it has entered the "unchartered territory" of competitive bidding. We are in substantial agreement with the conclusions and proposals delineated in the NPRM, and with the Commission's careful approach to making available for commercial use a national resource consistent with the public interest². However, we continue to have reservations as to whether designated entities will have a fair and equitable opportunity to participate in PCS under auction

¹ Pub. L. No. 103-66, Title VI, Section 6002.

² Communications Act of 1934, 47 U.S.C. 151, *et seq.*

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proceedings.

The full ramifications of the convergence of new technologies and vast financial resources are unknown. What is known is that PCS will have a fundamental impact on economic growth, global competitiveness, access to health services, educational and employment opportunities, our quality of life and, indeed, the very underpinning of our representative democracy: an informed citizenry. As the Commission prescribes a regulatory framework in furtherance of the objectives of developing and rapidly deploying new technologies, products and services, and promoting diversity of ownership and vendor participation in the new PCS industry, it must also prescribe concrete rules to ensure equitable and meaningful access to spectrum-based services lest PCS become the end-of-the-line rather than a new lifeline linking educationally and economically disadvantaged Americans in urban and rural areas to the entrepreneurial and employment opportunities of the 21st century.

I. AUCTION DESIGN

A. Bidding

We support the Commission's proposed method of oral bidding as consistent with the public interest in receiving a fair portion of the value of the electromagnetic spectrum being made available for commercial use provided appropriate steps are taken to minimize the opportunity for collusion among bidders. We believe that regardless of the methodology finally adopted, the bid package should include clear instructions requiring applicants to submit model business programs that set forth the bidder's policy toward minority and women ownership and participation, and the action the bidder intends to take to promote

ownership and participation of designated entities in the research, development and implementation of spectrum-based services. Eligibility to bid should be restricted to applicants that have submitted a model business program.

B. Alternative Payment Methods.

As noted in the Policy Statement on Minority Ownership of Cable Television Facilities, there are three impediments to minority entrepreneurship: money, money and money³. The challenge of capital formation with which minority- and women-owned businesses are confronted was underscored in testimony before the FCC Small Business Advisory Committee⁴. If the only payment method prescribed is a lump sum payment, the capital intensive nature of developing and implementing PCS will be a fundamental barrier to entry by designated entities. Accordingly, the Council supports installment payment of the entry costs by designated entities.

We also support use of the "innovator's bidding preference" proposed by the Small Business Advisory Committee to foster entry and participation of designated entities or consortia owned and controlled by such entities. The preference should be accorded to qualified applicants that offer innovative technologies or service delivery, for instance, to underserved urban or rural areas. Such a preference will have a two-fold effect: 1) increase entrepreneurial opportunities for designated entities; and 2) increase public access to

³ *Public Notice*, No. 82-524 (Mark S. Fowler issuing separate statement) (December 22, 1982).

⁴ *See, e.g.*, Statements of Francisco R. Montero and Barry D. Umansky before the SBAC, May 27, 1993.

spectrum-based services⁵.

C. Treatment of Designated Entities.

The Council supports the findings and recommendations of the Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF)⁶, and share their concerns as to whether designated entities will be accorded fair and equitable treatment under auction proceedings. The Council also supports the findings and recommendations of SBAC as consistent with the Council's research regarding tools that have been effective in promoting minority ownership of broadcast and cable facilities. These tools include tax certificates and, accordingly, we support SBAC's proposals regarding minority and SSBIC tax certificates.⁷ The Council also supports bidding preferences to designated entities, as well as to non-designated entities that have entered into strategic alliances with designated entities. The alliances, or joint ventures, must meet the eligibility requirements of ownership and control established by the Small Business Administration⁸.

D. Application, Bidding, and Licensing Requirements.

The Commission requested comments on information PCS applicants should file in order to qualify as bidders. We recommend that non-designated PCS applicants should be

⁵ See Report of The FCC Small Business Advisory Committee to the Federal Communications Commission Regarding Gen Docket 90-314 (September 15, 1993) (SBAC Report) at 14-15.

⁶ Comments of Minority Business Enterprise Legal Defense and Education Fund, PP Docket 93-253 (November 10, 1993).

⁷ SBAC Report at 18-20.

⁸ In re Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982).

required to submit a model business program outlining the bidder's policy on strategic alliances with designated entities, and action it will take to foster participation of minority- and women-owned businesses in the construction, operation and maintenance of the infrastructure, as well as in the areas of, *i.e.*, software and program development, distribution, training, advertising and marketing of spectrum-based services. Applications that do not include a model business program should be dismissed with no opportunity for resubmission.

CONCLUSION

The Council supports the Commission's tentative proposals to prescribe a workable and streamlined competitive bidding process in furtherance of the objectives of rapid deployment of spectrum-based services and promoting diversity of ownership and vendor participation in the emerging PCS industry. Our comments are designed to ensure that all Americans have an equal opportunity to participate and benefit from the information revolution that is the promise of PCS. By prescribing rules to achieve this goal, the public interest will be served and safeguarded for future generations of Americans.

Respectfully submitted,

COUNCIL OF 100

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